IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

-

WRIT PETITION NO : 6057 of 1995

Between:

M.Padmavathi W/o. Ramgopal, Hindu, R/o. Rayavaram
Kapileswarapuram Mandal E.G. District.

..... PETITIONER

AND

1 The Sub-Collector, East Godavari District at Rajhamundry
2 The Mandal Revenue Officer, Kapileswarapuram,East Godavari District.
3 The Mandal Revenue Inspector, Kapileswarapuram Mandal, East Godavari

District.
4 The Authorised Officer, Government of A.P., Land Reforms Tribunal,

Kakinada
5 Aadi Appa rao S/o Ramana, R/o Angara Kapileswarapuram Mandal,
East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or any appropriate Writ more particularly in nature of Writ of Mandamus declaring the action of the respondents 1 to 4 in trying to take the land in S.No.50/2 and 51/2 to an extent of 0-87 cents of Vedurumudi village, Kapileswarapuram Mandal, East Godavari District from petitioner's lawful possession and enjoyment as illegal, null and void and also violative of Art.300-A of constitution of India and for the consequential order directing the respondents to drop all further proceedings in this regard.

Counsel for the Petitioner : MR.CH.DHANAMJAYA

Counsel for the Respondents No.1 to 4 : GP FOR REVENUE

Counsel for the Respondent No.5 : None appeared.

The Court made the following :

ORDER : (Per Hon'ble Sri Bilal Nazki, J)

Case of the petitioner is that he has purchased land from its owner, but he came to know that a notice had been issued on 06.05.1994 under Section 11 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (hereinafter referred to as 'the Act'). According to him, he obtained a Photostat copy of the order, but he has not produced the same, which according to him shows he was not a party to the proceedings. Even without being a party to the proceedings, his land is being taken away by the respondents. For redressal of his grievance, he filed the Writ Petition.

In the counter affidavit filed by the respondents, it is stated that the petitioner was asked to vacate the land on the ground that the land was proposed for surrender by the 5th respondent, who filed declaration and the land was found surplus in terms of the Act. His lands are included in the holding of the declarant. These lands are claimed by the petitioner on the basis of sales effected subsequent to 01.01.1975 and sales effected after 01.01.1975 are illegal in terms of Section 17(1) of the Act. Therefore, even if the petitioner had sale deeds in his favour, even then, he has no right over the land in question.

The learned Counsel for petitioner however has drawn my attention to Section 10(5)(a) of the Act. Section 10(5)(a)(ii) of the Act lays down;

"the surrender of which is not acceptable on account of a dispute

as to the title to the land or an encumbrance on the land or on account of the land being in the possession of any person mentioned in item (v) of clause (i) of Section 3 or on account of the land proposed to be surrendered becoming inaccessible by reason of its severance from the remaining part of the holding; and the Tribunal shall, in every such case, serve a notice on the person concerned requiring him to surrender any other land in lieu thereof ; and thereupon the provisions of sub-sections (3) and (4) shall, mutates mutandis apply to such surrender :

Provided that where land proposed to be surrendered under this section is burdened with a mortgage, the Tribunal may, on an application made by the mortgagor with the consent of the mortgagee, by order, transfer such mortgage from the land so proposed to be surrendered to the residuary holding of the mortgagor or to any part thereof."

He submits that the petitioner has been duped by respondent No.5. After declaring the land in the declaration, he entered into sale deed therefore, if a notice had been given to him, he would have apprised the respondents of this fact and respondents could refuse the said land for surrender and could ask for alternate piece of land. This appears to be a genuine request and under Section 10(5)(a)(ii) of the Act, in case of land for which there is a dispute, the respondents have right to refuse its surrender.

For this reason alone, this Writ Petition is allowed to the extent that the petitioner shall not be made to surrender his land unless a chance is given to him to put forth his case. After hearing him, the respondents may pass appropriate orders in accordance with law.

Writ Petition is accordingly disposed of. No order as to costs.

16th December, 2004 BILAL NAZKI, J

ajr

To

1 The Sub-Collector, East Godavari District at Rajhamundry
2 The Mandal Revenue Officer, Kapileswarapuram,East Godavari District.
3 The Mandal Revenue Inspector, Kapileswarapuram Mandal, East Godavari

District.
4 The Authorised Officer, Government of A.P., Land Reforms Tribunal,

Kakinada
5 Two C.Cs., to the G.P. for Revenue, High Court buildings, Hyderabad (OUT)

6 Two C.D. copies.